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COMPTROLLER OF THE CURRENCY, OFFICE OF

The method of measuring net worth for insolvency purposes has been changed under a final rule issued by the OCC (see the 11/28/89 Fed. Reg., pp. 48851-56). The major change, according to the OCC, is the use of equity capital, rather than primary capital. The OCC said that by using equity capital as the measure, a bank's allowance for loan and lease losses, also known as the loan loss reserve, is excluded from the calculation of net worth. The OCC said the change is intended to bring its measurement of net worth more closely in line with GAAP. The change is incorporated in a final rule identifying the factors the OCC may consider in determining whether to appoint a receiver for a national bank. The factors are a national bank's net worth and/or its liquidity. The OCC said the final rule does not alter the method of determining insolvency on a liquidity basis. Furthermore, the OCC said it "expects to continue its long-standing practice of satisfying itself of a bank's insolvency on a case-by-case basis, taking into account all relevant facts and circumstances involving the particular bank under consideration. The effective date of the final rule is 12/28/89. For further information after reading the final rule, contact Ferne Fishman Rubin at the OCC at 202/447-1882.

RESOLUTION TRUST CORPORATION

The RTC's proposed rule concerning minimum qualifications, ethical standards of conduct, and restrictions on the use of confidential information by independent contractors has been published in the Federal Register (see the 11/28/89 Fed. Reg ., pp. 49038-46 and the 11/20/89 Wash. Rpt.). The certifications will apply to accountants, as well as practitioners in other professions. Comments must be submitted on or before 1/12/90 and will be considered by the RTC, as well as the Oversight Board. For further information after reading the proposed rule, contact Katherine A. Corigliano at the RTC at 202/898-7272.

SOCIAL SECURITY ADMINISTRATION

Voluntary draft computer software standards and edit criteria have been developed by the SSA to help ensure accurate crediting of employee wages earned and taxes paid to the SSA and IRS, the SSA announced recently. The SSA said its aim is to have the software standards adopted by U.S. employers, and it has requested comments on the standards. The SSA explained that SSA and IRS compare the wage information reported to the two agencies to ensure that the Social Security trust funds receive credit for the taxes paid by workers and that workers obtain proper credit on their Social Security records for their wages earned. The SSA said some of the reasons for discrepancies include: 1) employers not using the same employer identification number in reporting to both agencies; 2) employers not reconciling the data they send to both agencies; and 3) employers who go out of business failing to file annual reports for their employees to SSA. In addition, SSA said, there are many employee records that are reported incorrectly by name and/or Social Security number so that SSA cannot locate the correct record to credit the wages. Copies of the voluntary draft computer software standards are available by writing the SSA at the Office of the Chief Financial Officer, 6401 Security Boulevard, Room 400, Altmeyer Building, Baltimore, MD 21235 or by calling Sam Prestianni at the SSA at 301/965-2854.

TREASURY, DEPARTMENT OF

Opinion and notification letters regarding the acceptability of master or prototype (M&P) and regional prototype defined contribution plans will be issued by the IRS beginning 1/4/90, the IRS said in Announcement 89-154. The IRS said it will also begin issuing advisory letters regarding volume submitter specimen defined contribution plans at the same time. The IRS said it will not be able to approve target benefit and defined benefit plans until additional guidance pertaining to these types of plans has been published. Sponsors who have not yet filed their M&P, regional prototype, or specimen defined contribution plans are encouraged by the IRS to do so as soon as possible in order to receive approval of their plans at the earliest possible time. The announcement also provides information concerning paired plans, target benefit plans, and determination letters. Announcement 89-154 is scheduled to be published in Internal Revenue Bulletin 1989-50, dated 12/11/89.

Deadlines mandated by the Tax Reform Act of 1986 (TRA '86) concerning when employers must amend their pension plans to bring them into compliance with the Act have been extended, the IRS said in Revenue Procedure 89-65. The expiration date of the remedial amendment period under section 401(b) of the Internal Revenue Code is extended until the end of the first plan year beginning after 12/31/90 for certain disqualifying provisions. The expiration date of the remedial amendment period for plans adopted or amended after 12/31/87 is extended and will expire on the last day of the first plan year beginning after 12/31/90. The IRS said that certain collectively bargained plans that were not otherwise eligible for the remedial amendment period will now be eligible. In addition, the application of Model Amendment 3 under Notice 88-131 (see the 12/19/88 Wash. Rpt.) is extended to allow plan sponsors to continue the suspension of benefit accruals for all participants beyond the end of the 1989 plan year. The transitional rules under section 401(a)(26) are extended until the later or the beginning of the 1992 plan year or the first plan year commencing on or after the date that is 60 days after the publication of final regulations, according to the IRS. The IRS also announced that it will begin accepting applications for determination letters early in 1990. Revenue Procedure 89-65 is scheduled to be published in Internal Revenue Bulletin 1989-50, dated 12/11/89.

SPECIAL: TAX PENALTY SIMPLIFICATION PROVISIONS INCLUDED IN DEFICIT REDUCTION MEASURE PASSED BY CONGRESS

Provisions aimed at simplifying the civil tax penalty system were included in the deficit reduction measure passed by the Congress in the closing hours of the first session of the 101st Congress. The Congress adopted the Improved Penalty Administration and Compliance Tax Act, H.R. 2528, as a part of H.R. 3299, the Omnibus Budget Reconciliation Act of 1989. H.R. 2528 was introduced by Rep. J.J. Pickle (D-TX) and supported by the AICPA (see the 6/5/89, 6/12/89, and 6/19/89 Wash. Rpts.). House and Senate conferees agreed to accept H.R. 3299 with the House of Representatives' civil tax penalty reform provisions, rather than with the provisions of S. 1784, which was introduced by Sen. David Pryor (D-AR) in October (see the 10/30/89 Wash. Rpt.). H.R. 3299 was given final approval by the Senate and House of Representatives on 11/21/89. H.R. 3299 must be signed into law by President Bush.

SPECIAL: AICPA TESTIFIES AT IRS HEARING ON PROPOSED PASSIVE ACTIVITY REGULATIONS

"We are particularly disconcerted by the complexity and the length of the activity regulations...," Philip J. Wiesner, the chairman of the AICPA Tax Division's Partnership Subcommittee and member of the AICPA Passive Loss Task Force, testified at an IRS hearing in Washington, D.C. on 11/28/89. The hearing was held to hear comment on the proposed regulations relating to the definition of "activity" for purposes of applying the limitations on passive activity losses and passive activity credits. The proposed regulations were published in the 5/12/89 Federal Register (see the 5/15/89 Wash. Rpt.). Mr. Wiesner said the AICPA approves of the effect of the passive loss rules in dealing "a fatal blow to abusive tax shelter transactions," but that the proposed regulations are so complex that it will be difficult for tax practitioners and IRS agents to comprehend them. He warned that the "problems may become particularly severe as the tax shelter problem fades into history and the remaining impact of the passive loss rules primarily will be with respect to smaller businesses and start-up companies." Mr. Wiesner also said that, in spite of the fear that additional regulations might add further layers of complexity, immediate guidance should be issued concerning the application of the passive loss rules to trusts and estates, as well as to self-charged interest. Elimination of the so-called superaggregation rule and special rules for professional service undertakings was also recommended. Mr. Wiesner said the requirement of an affirmative election to disaggregate should be eliminated. Instead, he said, each separately conveyable portion of a rental real estate undertaking and each nonrental trade or business undertaking should be treated as a separate activity for disposition purposes, unless an affirmative election to aggregate is made. At a minimum, if the disaggregation elections are retained in the final regulations, he said, the elections should not be required to be made until the year of disposition. Mr. Wiesner also urged the IRS to announce as quickly as possible any changes that it intends to make to the activity regulations.

For further information contact Shirley Twillman at 202/737-6600.

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